

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 214 of 1995

WITH

CIVIL APPLICATION NO. 2445 OF 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not?Yes.

3. Whether Their Lordships wish to see the f

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of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?yes

5. Whether it is to be circulated to the Civil Judge?No

DEVABHAI TAPUBHAI

Versus

RANGE FOREST OFFICER & 2

Appearance:

MRS DT SHAH for Petitioner

MR SHASTRI FOR MR. DA BAMBHANIA for Respondent Nos.1 to 3.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/04/96

ORAL JUDGEMENT

This Special Civil Application has been filed seeking implementation of the order dated 11.11.1992

passed in the Recovery Application No. 1238 of 1990 by the Labour Court, Surendranagar and on the basis of this order dated 11.11.1992 a prayer has been made that the respondent be directed to pay a sum of Rs.12,824.70 paise with interest to the petitioner and that the respondent No.3 i.e. Collector, Surendranagar be directed to recover the amount from respondent Nos. 1 and 2. This Special Civil Application was filed in this Court on 13.1.1995 and after issuing the notice Rule was issued on 1.9.1995. An affidavit-in-reply dated 3.2.1995 had been filed by one Shri Niranjana Kumar Singh on behalf of respondent nos. 1 and 2 stating in para 6 thereof that apart from filing this Recovery Application No. 1238 of 1990 the petitioner had also filed contempt application before this High Court seeking implementation of the original award dated 6.7.1990 and at the time of hearing before the High Court due amount under the award which was sanctioned by the Government and which was payable to meet with the award had been deposited in the High Court and thereafter Misc.Civil Application No. 202 of 1991 which had been filed by the present petitioner had been withdrawn by him on 2.8.1991 and the award had been duly complied with by the respondent authorities. It has been further stated in the reply that the petitioner was receiving minimum wages at the rate of Rs.13.20 at the time when he was discontinued and therefore he was entitled to the amount of wages at the rate of Rs.13.20 per day. The amount under the award dated 6.7.1990 was computed accordingly and the same was paid and thereupon contempt application was withdrawn on 2.8.1991 as stated above. The factum of filing of this Misc. Civil Application No.202 of 1991 and withdrawal thereof as sanctioned by the Government is not disputed by the present petitioner even in the rejoinder which has been filed and the case of the present petitioner as was set up in the proceeding in Recovery Application No.1238 of 1990 that he was entitled at the rate of Rs.21.45 ps. per day was absolutely misconceived. I called upon the learned counsel for the petitioner to show from the original award dated 6.7.1990 as to whether in the original award figure of Rs.34,477.50 paise as mentioned in the impugned order dated 11.11.1992 had been directed or not. The learned counsel frankly submitted that no such figure had been computed or directed specifically. In the award the relief of 70% backwages was directed. Now the 70% backwages were to be computed by taking wages at the rate of Rs.13.20 per day and not at the rate of Rs.21.45 paise as was claimed by the petitioner in the recovery proceedings. The Labour Court, Surendranagar while passing the order dated 11.11.1992 proceeded on the assumption that the amount which has been computed and

claimed by the petitioner was due amount under the award dt.6.7.1990 but in fact, the Labour Court while passing the impugned order dated 11.11.1992 proceeded on mistaken belief and without any factual foundation and contrary to the terms of the award accepted the petitioner's claim and after adjusting the amount which had already been paid in 1991 at the time when the contempt application was withdrawn from this High Court further directed the payment of Rs.12,824.78 paise. No such amount is found to be due as per the legal entitlement in favour of the petitioner in terms of the award. Mrs.Shah appearing for the petitioner has submitted that whatever may be the fact, the respondents have not challenged the order dated 11.11.1992 passed against them and it is the petitioner who has come before this Court for the recovery of the amount under this order dated 11.11.1992 which has attained the finality and therefore the petitioner must be paid a further amount of Rs.12,824.78 paise notwithstanding the fact that an amount of Rs.23,118.19 paise had already been paid to the petitioner earlier as was deposited in the High Court during the pendency of Misc. Civil Application No. 202 of 1991 which was later withdrawn on 2.8.1991.

The order dated 11.11.1992 which is sought to be implemented through this Special Civil Application may have attained the finality and the respondents may have failed to challenge this order, the fact remains that this order dated 11.11.1992 is absolutely erroneous and has been passed contrary to the terms of the award. No party could be directed to implement the award once again, if it is found by this Court that it had already been implemented earlier. Any order, if found to be uncalled for and illegal, can't be directed to be implemented by issuing a writ even if such order has remained unchallenged. It will be a clear case of abuse and misuse of the process of the court if the equitable jurisdiction of this Court under Article 226 of the Constitution of India is allowed to be taken for a ride by any party with its litigious perseverance to encash the undue on the basis of a legal quibble that the order sought to be implemented has attained finality as it has remained unchallenged notwithstanding the fact that such order grants undue and unlawful benefit and was wholly uncalled for. The jurisdiction of this Court under Article 226 of the Constitution of India cannot be exercised to restore or perpetuate an illegal, uncalled for and an erroneous order and therefore, once it is found that the petitioner has already received his due and lawful entitlement in terms of the award which was in his favour a writ of mandamus cannot be issued in his

favour to enure the benefits of an uncalled for order so as to encash something which in fact is not due, merely because such an order has not been challenged and the respondents have been absolutely careless and negligent in not challenging such order although it was to their detriment and prejudice. In this view of the matter, I do not find any substance or merit in this Special Civil Application and the same is accordingly dismissed. Rule is hereby discharged. No order as to costs.

In view of this order passed in the main Special Civil Application, there shall be no order in Civil Application No.2445 of 1996 which is hereby disposed of.
